

SECOND REGULAR SESSION

# SENATE BILL NO. 835

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR CASKEY.

Pre-filed December 1, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To amend chapter 476, RSMo, by adding thereto one new section relating to mandatory electronic recording of custodial interrogations.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 476, RSMo, is amended by adding thereto one new section, to be known as section 476.054, to read as follows:

**476.054. 1. As used in this section, the following terms mean:**

(1) "Custodial interrogation", interrogation conducted in a police station, courthouse, correctional facility, community correctional center, detention facility, or other structured environment where adequate recording equipment is readily available;

(2) "Electronic recording", a complete and authentic electronic recording created by motion picture, videotape, audiotape, or digital media.

2. An oral, written, or sign language statement of a defendant made during a custodial interrogation shall be presumed inadmissible as evidence against a defendant in a criminal proceeding unless:

(1) The interrogation is electronically recorded in its entirety;

(2) Prior to the statement, but during the recording, the accused is given the requisite Miranda warnings and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) The recording device was capable of making an accurate recording, the operator was competent, and the recording has not been altered;

(4) All voices on the recording that are material to the custodial interrogation are identified; and

(5) Not later than the twentieth day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings of the defendant made pursuant to this section.

3. The state may rebut a presumption of inadmissability through clear and convincing evidence that:

(1) The statement was both voluntary and reliable; and

(2) Law enforcement officers had good cause not to tape the entire interrogation. As used in this subsection, the term "good cause" shall include:

(a) The interrogation took place in a location not identified by the statute and where the requisite recording equipment was not readily available;

(b) The accused refused to have his or her interrogation electronically recorded, and the refusal itself was electronically recorded; or

(c) Failure to electronically record an entire interrogation was the result of equipment failure and obtaining replacement equipment was not feasible.

4. Notwithstanding any other provision of law to the contrary, a written, oral, or sign language statement of the accused made as a result of a custodial interrogation is admissible against the accused in a criminal proceeding in this state if:

(1) The statement was obtained in another state and was obtained in compliance with the laws of that state or this state; or

(2) The statement was obtained by a federal law enforcement officer in this state or another state and was obtained in compliance with the laws of the United States.

5. Every electronic recording made of a custodial interrogation must be preserved until such time as the defendant's conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

6. Nothing in this section precludes the admission of a statement made by the accused at his or her trial or hearing in open court, before a grand jury, or of a statement that is the res gestae of the arrest or the offense, or a statement that does not stem from custodial interrogation.

7. This section shall only apply to custodial interrogation in which the accused is suspected of a felony.